

FILADELFIA SANCHEZ

IBLA 97-88

Decided January 21, 1999

Appeal from a decision of the Taos Resource Area Manager, Bureau of Land Management, rejecting color-of-title application NMNM 97076.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title: Applications

A class 1 color-of-title claim requires good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years. The claim or color of title must be based upon a document which, on its face, purports to convey the claimed land to the applicant or the applicant's predecessors.

APPEARANCES: William W. Sanchez, Dixon, New Mexico, on behalf of Filadelfia Sanchez.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Filadelfia Sanchez has appealed from a November 7, 1996, decision of the Taos Resource Area Manager, Bureau of Land Management (BLM), rejecting color-of-title application NMNM 97076.

On October 22, 1996, William M. Sanchez filed a class 1 application with BLM on behalf of his mother, Filadelfia Sanchez, pursuant to the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994), seeking title to 1.83 acres of land described as lot 53, sec. 35, T. 23 N., R. 10 E., New Mexico Principal Meridian (NMPM), Rio Arriba County, New Mexico. Sanchez based her claim on four deeds: a December 6, 1898, deed, from Maria Albina Maes to Ricardo Martinez for land which was later patented to Martinez as small holding claim (SHC) No. 958, tract 1; a June 4, 1915, patent (No. 476229) to Atanacio Martinez for SHC No. 5635 containing 5.728 acres in sec. 35, T. 23 N., R. 10 E., NMPM; a January 7, 1957, Spanish Warranty Deed 1/ transferring land bordered by the river (the

1/ Both the Dec. 6, 1898, and Jan. 7, 1957, deeds are in Spanish.

Rio Grande River) on the north, by public land on the south, and by private land identified by owner on the east and west from Odilia M. Medina to Maximinio Sanchez, Sr.; and a May 10, 1965, tax deed from the New Mexico State Tax Commission conveying land bounded on the north by the river, on the south by the public land, on the east by land owned by F. Martinez, and on the west by land owned by A. Martinez to Maximinio Sanchez, Sr., and Filadelfia Sanchez, his wife. ^{2/} She asserted that she first learned that she did not have clear title to the land in 1980 from BLM surveyors. Her application also listed a trailer, a barn, and houses as improvements on the land.

In a case profile dated November 7, 1996, a BLM realty assistant analyzed the color-of-title application and the accompanying deeds. She concluded that the two oldest deeds related to private lands. In that regard, she stated: "The Bureau of Land Management is not claiming the private property and acknowledges the patents." The May 10, 1965, tax deed, she determined, negated any former title to the land described therein and initiated a new title. She further determined that, because both the January 7, 1957, deed and the May 10, 1965, tax deed described the southern boundary of the affected land as public land, the grantor and the grantee knew or should have known that the private land abutted public land. She stated that the application would be rejected for failure to meet the good faith and peaceful adverse possession requirements of the Color of Title Act, and that the parcel would be offered to Sanchez through a direct sale at the appraised value of \$12,000.

In his decision of the same date, the Area Manager determined that the original deeds submitted with the application described private property adjacent to the claimed parcel within SHC No. 5635 and SHC No. 958, tract 1. He found that the tax deed for the private property broke the previous chain of title and initiated a new chain, and that the tax deed's identification of the southern boundary of the property as public domain should have put Sanchez on notice of the boundaries of her property. He therefore concluded that Sanchez had failed to satisfy the good faith and peaceful adverse possession prerequisites of the Color of Title Act and rejected her application. The Area Manager offered Sanchez the option of purchasing the parcel through a direct sale. She declined the offer by letter dated November 23, 1996, and appealed the decision to the Board. ^{3/}

^{2/} The form entitled "Conveyances Affecting Color or Claim of Title," filed as part of the color-of-title application, lists two additional conveyances: one from Luisita Martinez to Eduardo Martinez and the other from Luisita Martinez to Victoriano Martinez, both dated May 18, 1987, but the case file does not contain a copy of either conveyance.

^{3/} Although on appeal Sanchez questions the fairness of valuing the property at \$12,000 for direct sale purposes, the issue of the appropriate valuation of the property is not properly before us in this appeal of the denial of her color-of-title application.

On appeal, William Sanchez asserts that his mother has lived on the land for over 50 of her 86 years. He states the family has paid taxes and placed improvements on it, thinking they had ownership. He asserts that "[w]e have documents stating said land has been in our family since 1898 when President Woodrow Wilson deeded said land to Atanacio Martinez my grandfather." (Statement of Reasons at 1). He contends that the "BLM survey left a sandwich of land between other property we have," and that the land in question contains improvements built in the 1930's and 1940's including two houses, a barn, a corral, storage sheds, and a garage. He explains that it would be a hardship of his mother were forced to leave the land.

[1] The Color of Title Act, 43 U.S.C. § 1068 (1994), sets forth the requirements that must be met by a claimant in order to receive a patent under the Act:

The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, * * * issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than \$1.25 per acre * * *.

The method for obtaining a patent outlined in subsection (a) of 43 U.S.C. § 1068 (1994) is known as a class 1 claim. 43 C.F.R. § 2540.0-5(b).

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met. Heirs of Herculano Montoya, 137 IBLA 142, 147 (1996); John P. & Helen S. Montoya, 113 IBLA 8, 13-14 (1990). The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application. See Heirs of Herculano Montoya, *supra*; John P. & Helen S. Montoya, 113 IBLA at 14, and cases cited.

As an initial matter, we note that to the extent Sanchez is asserting that she has actual title to the claimed land through a patent from Woodrow Wilson, that issue is not properly raised in a color-of-title proceeding. Heirs of Herculano Montoya, *supra*; Shirley & Pearl Warner, 125 IBLA 143, 148 (1993). A color-of-title applicant may not contest Government ownership of the land sought. Loyla C. Waskul, 102 IBLA 241, 244 (1988), and cases cited. A color-of-title applicant necessarily admits that title to the land is in the United States since, by filing the application, an applicant seeks to have the United States convey actual title to him. Thus, an applicant cannot be heard to assert that color of title is based on a patent from the Government because, if this were true, the applicant

would possess actual title not color of title. Therefore, at least as far as adjudication of that application is concerned, the applicant is estopped from alleging ownership of legal title to the land. Benton C. Cavin, 83 IBLA 107, 109 n.2 (1984).

A color-of-title applicant must show that the land now sought was held by him or his predecessor-in-interest for the requisite statutory period "under claim or color of title." 43 U.S.C. § 1068 (1994). A claim of title supporting a color-of-title application must be based on an instrument from a source other than the United States, which on its face purports to convey the claimed land. Heirs of Herculano Montoya, 137 IBLA at 148; Mabel M. Sherwood, 130 IBLA 249, 250 (1994). The conveyance document initiating the chain of title must describe the land conveyed with such certainty that its boundaries may reasonably be ascertained and must include the land now sought under the color-of-title application. Mabel M. Sherwood, *supra*; Charles M. Schwab, 55 IBLA 8, 11 (1981); Benton C. Cavin, 41 IBLA at 270.

The 1898 deed describing land patented as SHC No. 958 and the 1915 patent for SHC No. 5635 cannot form the basis for Sanchez' color-of-title application because they do not stem from a source other than the United States. Furthermore, according to the master title plat included in the case file, these patents do not include lot 53 but embrace land adjacent to it on the north and east between the lot and the Rio Grande River. The 1957 deed and the 1965 tax deed, which according to BLM encompass private land, do not on their faces describe the lands within lot 53 claimed by Sanchez and specifically state that public domain forms the southern boundary of the deeded lands. Sanchez has failed to meet her burden of tracing her chain of title to an instrument from a source other than the United States which on its face purports to convey the claimed land, and her application must therefore be rejected.

Even if the 1957 and 1965 deeds did adequately describe the land requested, Sanchez' application nevertheless fails because she has not established good faith, peaceful adverse possession for the requisite 20-year period. The May 10, 1965, tax deed interrupted the statutory 20-year period and initiated new title for purposes of determining when claim or color of title commenced. As we have stated: "Tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is a breaking up of all previous titles, legal and equitable." Walter W. Bender, 146 IBLA 134, 137 (1998). Because Sanchez learned that she did not have good title to the land in 1980, only 15 years after the issuance of the tax deed, she did not fulfill the requisite 20-year period of good faith, adverse possession. See Felix F. Vigil, 129 IBLA 345, 348-49 (1994), and cases cited; Grant F. and Jessie Fern Woodward, 87 IBLA 118, 120 (1985). Accordingly we find that BLM properly rejected her color-of-title application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge